2, fn. 1, 20–21).[3] But it is our view that to read the regulation as amended so as to permit traders to invoke *legal or judicial* remedies to collect unsecured debts renders meaningless the retained phrase, "at the trader's own risk." We believe that the 1937 amendment went no further than to empower the United States Indian Agents to encourage the Indians to pay these debts, and that the coercive force of court proceedings was still excluded. Indeed, the fact that Indian Agents were permitted to educate and encourage their charges to pay just debts would emphasize—if any significant content is still to be given to the provision for credit at the trader's own risk—that formal sanctions would continue to be unavailable.

The court below avoided this question on the procedural ground that the assignment of error in that court had presented only jurisdictional questions, and that the federal regulation went only to the merits of the claim (R. 59). But the federal regulation (which has the effect of a statute) operated to deprive the state courts of jurisdiction over such a claim. This is analogous to the effect of federal enactments under the commerce power of ousting the state legislature or courts of jurisdiction they would otherwise possess, e. g., *Garner* v. *Teamsters Union*, 346 U. S. 485; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468; *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218.

[3] In their petition for certiorari, petitioners explicitly relied on the regulation. See Pet. 2, 10, 11.

Even if the regulation (standing alone) is thought to be ambiguous, the same conclusion should be drawn from the fact that the field of trading with the Indians has been occupied by the federal statutes and the regulations issued thereunder (as petitioners point out, Pet. Br. 20–21, 27). 25 U. S. C. 261 *et seq.* Departmental decisions have dealt with various aspects of such trading. *State Tax Laws—Indian Trade,* 57 I. D. 124; *State Sales Taxes, Restricted Indian Funds,* 58 I. D. 562; *Regulation of Traders on Navajo Reservation,* 60 I. D. 176. These decisions illustrate the completeness with which such trading is subject to federal control—for example, as to prices to be charged. There is no room for application of state law to such Indian trading. In this area of exclusive and preempted jurisdiction, the remedies of traders are, we submit, limited to those provided by federal statute or regulation. And, in any case, the state court certainly has no authority to enter a judgment contradictory to, or inconsistent with, the federal regulation.

II.

For these reasons, we believe that it is unnecessary to consider what would be the situation absent specific federal statute, regulation, or tribal provision. We do not agree that reservation Indians are beyond the reach of *all* state law until Congress specifically provides otherwise. In *Federal Indian Law,* published by the Department of the Interior in 1958, a writer described as a student of the subject is quoted (p. 363) as declaring "Indians are not extraterritorial but only

subject to a special rule of substantive law." Continuing the quotation, it is said:

> In civil matters the lacunae of federal legislation are so enormous that the general law, though theoretically inapplicable, practically fills the gaps, subject to proof of a positive Indian custom that varies the law. Thus federal legislation and, in default thereof, Indian custom rule; but state law practically covers much of the ground. (W. G. Rice, The Position of the American Indian in the Law of the United States (1934), 16 J. Comp. Leg. 78, 92.)

A few examples of application of state laws to reservation Indians to their benefit are *Harrison* v. *Laveen*, 67 Ariz. 337, 196 P. 2d 456, sustaining their right to vote;[3] *State of Arizona* v. *Hobby*, 221 F. 2d 498 (C. A. D. C.), holding that the state may not exclude reservation Indians from participation in state plans for aid to the disabled; and *Acosta* v. *San Diego County, et al.*, 126 Cal. App. 2d 455, 272 P. 2d 92, holding reservation Indians to be entitled to emergency relief for the indigent. See also *Vermillion* v. *Spotted Elk*, 85 N. W. 2d 432 (N. D. 1957). In the *Harrison* case, the court refers to several instances in

[3] To us, petitioners' apparent agreement with this case and their assertion on the same page of their brief (p. 15) that "the courts of Arizona are not free * * * to exercise civil jurisdiction over any Indians who reside on Indian reservations" are contradictory. On this *general* question of power we see no sharp difference between exercise of civil jurisdiction by the courts or by the state legislature. In fact, it is often necessary to invoke court jurisdiction in order to make effective various legislative provisions (including the right to vote). The *Harrison* case was a mandamus proceeding by reservation Indians against the county recorder.

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No. 39

In the Supreme Court of the United States

OCTOBER TERM, 1958

PAUL WILLIAMS AND LORENA WILLIAMS, HUSBAND AND WIFE, PETITIONERS

v.

HUGH LEE, DOING BUSINESS AS GANADO TRADING POST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

J. LEE RANKIN,
Solicitor General,
PERRY W. MORTON,
Assistant Attorney General,
ROGER P. MARQUIS,
Attorney,
Department of Justice, Washington 25, D. C.

the field of domestic relations where the state laws are regularly invoked, and other examples of application of state law are cited in the *Acosta* case. Another instance where use of local facilities and agencies is highly desirable is represented by the various welfare provisions for child care, prevention of juvenile delinquency, and the like. Judicial power may be necessary in order to implement these provisions of state law or regulation.[4]

Since this case can properly be disposed of (in favor of the petitioners) on the ground discussed above in Part I, we believe that it would be inadvisable, as well as unnecessary, for the Court to go further and pass upon the broad question of the general jurisdiction of state courts or legislatures over transactions and matters arising within, or from, an Indian reservation in the state. The problem of state jurisdiction in a particular case may well depend upon

[4] The Federal Government does not attach the same significance to the Presidential veto of the 1949 Navajo-Hopi Rehabilitation Bill as petitioners do (see Pet. Br. 18). The Presidential veto (Pet. Br. 30–35) indicates no more than that certain jurisdiction which the Federal Government had the power to confer on the respective states was withheld; there is no indication that jurisdiction already possessed by the respective states should be withdrawn or that no such pre-existing jurisdiction was thought to exist. Similarly, the Act of August 15, 1953, 67 Stat. 588 (discussed at Pet. Br. 12–15), conferred certain new civil jurisdiction upon the respective states; the Act did not deal with the reserved jurisdiction which the states already possessed. In our view, these and comparable statutes do not show a Congressional purpose to terminate preexisting or reserved state power with respect to Indians until the state affirmatively acts to obtain the new jurisdiction offered by the Federal legislation, or the Federal Government affirmatively acts to provide the states with jurisdiction.

the subject matter of the action, the status of the pertinent federal legislation or regulations, or the purpose and impact of the particular state legislation or regulations. It is inappropriate, in our view, to lay down at this time a definitive or precise rule governing *all* cases and instances. Of course, reservation Indians are wards of the Federal Government and the Federal Government has the duties and obligations of a trustee toward them; any state jurisdiction must therefore be consistent with, and subject to, these duties and obligations of the Federal Government and cannot detract from or interfere with the Federal Government's responsibility and authority. But the effect of this overriding principle on other particular instances need not be decided in this case which can be determined on its own basis.

CONCLUSION

For the foregoing reasons, we submit that the decision below should be reversed on the ground that jurisdiction of the state court over claims by traders on the reservation is precluded by the federal regulations authorizing and controlling such trading.

Respectfully submitted.

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